



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The limitations on the power of consuls to deal with the property rights of their nationals vary with the treaties binding the various countries they represent and with the local laws of those to which they are accredited. International law and usage have of course their influence in determining such limitations as are imposed by diplomatic agreements and judicial decisions.

H. D. S.

CORPORATIONS—POWER OF DIRECTORS—REFUSAL TO REGISTER TRANSFER OF SHARES OF STOCK—The desirability that those in control of a corporation should retain that power has led to many attempted restrictions on the free transfer of stock. This continued shaping of policies by one group, while it may lead to efficient management, may be detrimental to the interests of minority stockholders. There is a further objection to conditions limiting the absolute right to transfer stock, *viz.*, that it is a restriction on a man's otherwise absolute right to dispose of his personal property as he pleases.

In the absence of restrictions in the articles of association, directors cannot prevent the transfer of shares under the English Companies Act of 1862, which provides that the company may determine the manner of transferring shares.¹ Such restrictions are quite common in the articles of English companies, however, and in a recent English case² some interesting questions as to the discretion of directors in refusing to register shares to transferees were presented. There a company was formed as an outgrowth of a firm of steamship managers. The following provision was to be found in the articles of association: "The directors and managers may decline to register the transfer of any fully paid-up share or shares on certifying that, in their opinion, it is contrary to the interests of the company that the proposed transferee should be a member thereof." Dissension grew up between one of the directors and two others and he threatened to wind up the company; he then made two transfers of single shares, stating that his purpose was to fill a vacancy caused by one woman, and to stop "hole-in-corner" meetings. The opposing directors refused to register stock to the transferees, mentioning that it was contrary to the company's interest that the transferee should be a member thereof, but that the certificate did not reflect on the personal character or financial standing of the transferee. The directors deemed the transfer of *single* shares a departure from the essential family nature of the company, as well as tending to increase secretarial expenses. The court held that the directors had exceeded

¹ Weston's Case, L. R. 4 Ch. 20 (Eng. 1868).

² *Re Bede Steam Shipping Co.*, 115 T. L. R. 580 (Eng. 1916).

their discretion in declining to approve the transfer, because they did favor splitting up the holding, they having no personal objection to the proposed transferee. A dissenting judge held their act justified, intimating that the transferees were mere tools of the transferor, and that the directors had to consider whether the transferees were acting for some other person and whether the object of that other person was contrary to the interests of the company.

We are, therefore, not surprised to find a leading New York case holding that where no discretionary power was expressly reserved, the directors of the Standard Oil Trust were obliged to receive as a shareholder a competitor who had been a bitter enemy of their concern, he having bought the shares in the open market.³ A by-law, unwarranted by a charter prohibition of the transfer of stock to competitors, was in accordance with this view held void.⁴ Many courts have held that a by-law, unauthorized by the charter, restricting the transfer of shares of stock without first giving other stockholders and the corporation an option to purchase it at a price named, is void as being a restraint upon the alienation of property;⁵ so, of a by-law requiring the consent of the president and majority of directors as a condition precedent to the transfer of shares.⁶ By-laws preventing transfer of stock to non-stockholders without the consent of directors were held void as unreasonably restraining transfer of property, and so the cases might be multiplied indefinitely.⁷ But temporarily excluding stock from market during the existence of a contract for the sale of treasury stock did not come within the rule.⁸ It is to be noted that these cases are those in which the charter makes no provision for restrictions on the sale of stock, and, as in England, where charter contains such a clause, it is of course valid.⁹ In a comparatively recent New Jersey decision there was a section of the general corporation statutes that shares were transferable on the books in such manner and under such regulations as the by-laws prescribed. A by-law provided for issuance of a new certificate to the transferee if approved by the board of directors. The act and by-law were construed as only authorizing the directors to pass upon the formalities of transfer and not to give them the right to refuse, in their discretion, a transfer by one stockholder to another. The court, however, set its face against all

³ Rice v. Rockefeller, 134 N. Y. Appeals 174 (1892).

⁴ Kretzer v. Lightning Rod Co., 181 S. W. 1066 (Mo. 1916).

⁵ Bloede v. Bloede, 84 Md. 129 (1896); Ireland v. Globe Milling Co., 21 R. I. 9 (1898).

⁶ Finch v. Macoupin Co., 146 Ill. App. 158 (1908).

⁷ Miller v. Farmers' Milling Co., 78 Neb. 441 (1907); Douglas v. Aurora Daily News Co., 160 Ill. App. 506 (1911).

⁸ Cook v. Buck, 149 Pac. 95 (Col. 1915).

⁹ Casper v. Kalt Zimmers Co., 159 Wis. 517 (1914).

such fetters on the free transfer of stock.¹⁰ In Wisconsin an early decision¹¹ held a by-law prohibiting transfer of stock by a stockholder without consent of all the stockholders void as against public policy. In a later case,¹² however, in the same jurisdiction, articles of incorporation, by-laws and stock certificates on their face, provided that shares were not transferable except in pursuance of a vote of two-thirds of outstanding shares and this majority might either consent to the transfer or themselves take up the shares sought to be transferred by paying for them at par. If they did neither the holder was at liberty to sell and transfer his shares as usual. The court said, "It is sometimes necessary and often desirable that a corporation protect itself against the acquisition of shares of its stock by rivals in business or other disturbers who might purchase shares merely for the purpose of acquiring information which might thereafter be used against the interests of the company." Similar restrictions upon the transfer of shares are generally recognized and held valid where they form part of the charter or articles of organization of the corporation and are matters of contract. So we find the Massachusetts courts starting a chain of authorities holding that even though a by-law to the effect that a board of directors should appraise the value of shares and have the option to take them at that value in case of any transfer should be void, it would be upheld as an agreement between corporation and stockholder, the by-law in question being printed on back of the certificates.¹³ As a further step in the development of the doctrine in that jurisdiction comes the decision holding that in the absence of proof of West Virginia law a by-law of a corporation of that state prohibiting a stockholder from selling stock without first offering for sale to directors, the court saying, "There seems to be no greater objection to retaining the right of choosing one's associates in a corporation than in a firm."¹⁴ An Ohio court construed a general provision in the corporation statutes of Delaware authorizing a corporation to make by-laws for the certification of a transfer of stock as rendering valid a by-law giving directors thirty days within which to dispose of stock to persons deemed desirable as holders.¹⁵

In accordance with the view of the Abbott case, Pennsylvania holds when the organizers of a corporation agreed that a by-law of the proposed corporation should provide that the subscriber should not sell his stock until he should have offered it to other stock-

¹⁰ *Morris v. Dyeing Machine Co.*, 81 N. J. E. 256 (1913).

¹¹ *In Re Klaus*, 67 Wis. 401 (1886).

¹² *Farmers' Co. v. Laun*, 146 Wis. 252 (1911).

¹³ *New England Trust Co. v. Abbott*, 162 Mass. 148 (1894); *Weiland v. Hogan*, 172 Mich. 626 (1913).

¹⁴ *Barrett v. King*, 181 Mass. 476 (1902).

¹⁵ *Nicholson v. Franklin Brewing Co.*, 82 Ohio St. 94 (1912).

holders, such a by-law is upheld as an agreement among subscribing stockholders.¹⁶ A similar restriction in the by-laws was sustained in Feldstein's estate,¹⁷ the restriction being noted on the certificate.

Thus we see from a survey of the cases that the courts are tending away from the view that there is something pernicious in provisions adopted at organization of the corporation, giving those vitally interested in the corporation a chance to buy up shares before they are placed upon the market, or even in reposing, as in the English case, discretion in the directors as to registering the transferee. It is submitted that the discretion of the directors exercising this power is as much a subject of review as a case where they had set aside a sum for depreciation to the apparent detriment of rights of preferred stockholders to a dividend, and that such a control is essential to the maintenance of a family concern, which, as in our principal case, is really a partnership under corporate guise.

C. B. W.

¹⁶ Garrett v. Lawn Mower Co., 39 Pa. Superior Ct. 78 (1909).

¹⁷ 25 D. R. 602 (Pa. 1916).